IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

WEDNESDAY, THE 24TH JANUARY 2007 / 4TH MAGHA 1928

WP(C).No. 7980 of 2005(Y)

PETITIONER:

DANIEL MATHEW,
VAYALIRAKATH VEEDU, KADAMPANAD P.O.,
PATHANAMTHITTA DISTRICT.

BY ADV. SRI.A.M.THOMAS
SRI.SURESH JOSE

RESPONDENTS:

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1. UNION OF INDIA, REPRESENTED BY THE
SECRETARY TO THE MINISTER OF DEFENCE,
NEW DELHI.

2. CHIEF OF ARMY STAFF,
ARMY HEAD QUARTERS, NEW DELHI.

3. THE COMMANDING OFFICER,
EME RECORDS, SECUNDARABAD-24,
ANDRA STATE.

BY ADV. SRI.P.GOPINATHA MENON, ADDL.CGSC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 24/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.K.DENESAN, J.

WP(C)No. 7980 OF 2005

Dated this the 24th January, 2007.

JUDGMENT

The petitioner was discharged from the military service in the year 1968. Having regard to the percentage of disability certified by the Medical Officer he was granted disability pension from 1968 onwards. In the year 1990 a review was conducted. The medical board certified that the disability was less than 20%. Therefore the respondents declined to pay disability pension to the petitioner from 1990 onwards. Feeling aggrieved, the petitioner filed appeal before the first respondent. Thereafter, he filed representation in 2004, stating that orders on the appeal have not been passed and, at any rate, no such order has been received by him. This writ petition has been filed seeking for directions to the respondents to consider that representation.

2. In the statement filed on behalf of the respondents it is stated that the appeal filed by the petitioner was dismissed as per order passed on 23.10.1991 (Ext.R1(a). A perusal of the order shows that the same was sent to the petitioner by registered post with copy to all the officers concerned.

3. The respondents have discharged the burden cast on

them to establish that the appellate order was duly communicated to the petitioner. It is difficult to believe the averments made in the writ petition that Ext.R1(a) order sent by registered post was not received by the addressee. Moreover, it is militating to common sense to assume that the petitioner might have kept quite against the lethargy of the respondents for a period of about 14 years after receiving an appeal against the order stopping the disability pension. I am therefore of the view that the petitioner has approached this Court with unclean hands and has made an attempt to get directions against the respondents suppressing material facts. Writ petition is liable to be dismissed. I do so.

K.K.DENESAN
Judge

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